

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NINAD NARAYAN HULYALKAR

Plaintiff,

-V.-

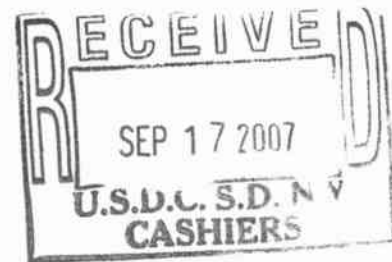
HON. MICHAEL CHERTOFF,
SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY;
DR. EMILIO GONZALEZ,
DIRECTOR OF THE UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES;
and
ANDREA QUARANTILLO,
DISTRICT DIRECTOR OF THE USCIS
DISTRICT OFFICE IN
NEW YORK

Defendants.
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CIVIL ACTION
NUMBER

JUDGE LYNCH

07 CIV 8125



Plaintiff NINAD NARAYAN HULYALKAR, by his attorney, FREDRIC H. AARON, ESQ., as and for his Petition for Hearing on Naturalization Application, respectfully shows and alleges as follows:

INTRODUCTION

1. This is a Petition under the Immigration and Naturalization Laws, 8 U.S.C. §§1446 and 1447(b), which requires the United States Citizenship and Immigration Services ("USCIS") to make a decision on a naturalization application within 120 days after the examination of the applicant. The plaintiff, Ninad Narayan Hulyalkar ("Plaintiff"), is seeking to have this Court grant an adjudication of the naturalization application in the court and by the court, or, in the alternative, to remand the naturalization application to the USCIS for immediate adjudication.



JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 8 U.S.C. §1447(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331. Venue lies in this district under 8 U.S.C. §1447(b) as it is the district in which the USCIS District Office is located.

THE PARTIES

3. Plaintiff is an Indian citizen who holds permanent resident status in the United States and has been a lawful permanent resident of the United States for at least 5 years. The Plaintiff resides at 426 Coleridge Road, Rockville Center, New York 11570.

4. Defendant Hon. Michael Chertoff ("Chertoff") is the current Secretary of the Department of Homeland Security, a Cabinet level position in the Executive Branch of the United States Government, with departmental control and oversight over the USCIS.

5. Dr. Emilio Gonzalez ("Gonzalez") is the current Director of the USCIS, and holds control and oversight over each of the USCIS District Offices.

6. Andrea Quarantillo ("Quarantillo") is the current District Director of the USCIS District Office in New York.

FACTS

7. Plaintiff filed an Application for Naturalization on Form N-400 with the Vermont Service Center of the USCIS on July 8, 2004.

8. On April 22, 2005, the Plaintiff received a Notice of Action from the USCIS showing receipt of the Application of Naturalization on Form N-400, the Application Number ESC*001271945 and the INS A# 047 143 289.

9. On or about April 22, 2005, the Plaintiff received a Notice of Action from the USCIS directing the Plaintiff to report for his examination by the USCIS at the Garden City Center, 711 Stewart Avenue, New York, NY 11530 on June 22, 2005 at about 9:15 A.M.

11. On June 22, 2005, the Plaintiff and his wife, Rocio Fernandez-Giro Munoz, reported to the Garden City Center of the USCIS for their examination. The Plaintiff passed the tests of English and U.S. history and government. He was also interviewed by INS Officer Ambriz who told Plaintiff that he had passed the tests, his application would be sent for approval after the pending FBI background check was completed, and the USCIS would send him a written decision about his application within the statutorily mandated time period.

12. On or about July 1, 2005, Ms. Rocio Fernandez-Giro Munoz, the Plaintiff's wife, received notification of approval of her naturalization and was requested to attend an Oath Ceremony on July 1, 2005. Ms. Fernandez-Giro Munoz attended the Oath Ceremony and became a naturalized US citizen.

13. On or about August 1, 2005, the Plaintiff filed a request under the Freedom of Information-Privacy Acts ("FOIPA") with the FBI.

14. On or about August 17, 2005, the Plaintiff received a response from the FBI stating that the FBI could locate no records responsive to his FOIPA request.

15. On or about December 28, 2005, the Plaintiff visited the Manhattan Center of USCIS to inquire about the status of his application and was told that his application was still pending FBI background check.

16. On or about December 28, 2005, Plaintiff received a letter from the USCIS stating that his application was still "pending receipt of security checks."

17. On August 3, 2007, Fredric H. Aaron ("Aaron") contacted the USCIS to inform them of the Plaintiff's intention to sue under 8 U.S.C. §1447(b).

18. At all times during this process, Mr. Chertoff was the Secretary of Homeland Security. On information and belief, since January 4, 2006, Dr. Gonzalez was the Director of the USCIS. On information and belief, since January 1, 2007, Ms. Quarantillo was the District Director of the USCIS District Office in New York. All of these individuals either had the authority to adjudicate the Plaintiff's application for naturalization or to order others to adjudicate the Plaintiff's application.

PLAINTIFF'S CAUSE OF ACTION UNDER 8 U.S.C. §1447(b)

19. 8 U.S.C. §1447(b) requires the USCIS to make a final decision on Plaintiff's application for naturalization within 120 days after the examination. In this case, the examination occurred on June 22, 2005, and therefore, a final decision was required to be made on or before October 20, 2005. The Defendants did not issue a final decision within this time period, nor did they provide any notice of disposition of any kind to Plaintiff regarding his application for naturalization.

20. Defendants have never demonstrated any legitimate reason for the delay. The FBI's response to Plaintiff's FOIA request clearly shows that he should pass any and all security background checks. We note that the FBI was able to respond to Plaintiff's FOIPA request in only sixteen (16) days.

21. Failure to adjudicate Plaintiff's application in the time specified by statute has prejudiced Plaintiff, including, without limitation, denying him the right to vote in the recent federal and local elections.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Adjudicate Plaintiff's application for naturalization in his favor, and grant him the right to file a Notice of Naturalization Oath Ceremony; or

B. In the alternative, remand Plaintiff's application for naturalization to USCIS and order the USCIS to make immediate adjudication of the application, but in any event, no later than thirty (30) days after this Court renders judgment; and

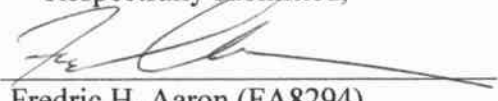
C. In the event this Court grants Plaintiff the requested relief in either A or B, above, award Plaintiff his costs and reasonable expenses incurred in this action, including, without limitation, attorneys' fees, all pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412; and

D. Grant such other relief as the Court may deem just and proper.

Dated: September 14, 2007

Respectfully submitted,

By:

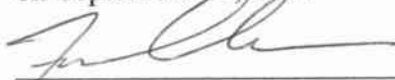

Fredric H. Aaron (FA8294)
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516-802-4140
Attorney for Plaintiff

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.

I, Ninad Narayan Hulyalkar, am the Plaintiff in the within action. I have read the foregoing Petition for Hearing on Naturalization Application and know the contents thereof. The contents of the Petition for Hearing on Naturalization Application are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


Ninad Narayan Hulyalkar

Subscribed and sworn to before me
on September 14, 2007


Fredric H. Aaron, Notary Public
My commission expires on
November 17, 2007

